

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: Bjugan, Britt L.

Debtor,

Bruce Kreofsky and Sons, Inc.,
a Minnesota corporation,
d/b/a Kreofsky Building
Supplies,

Plaintiff,

v.

Britt L. Bjugan,

Defendant.

Case No. 03-37358
Chapter 7

COMPLAINT

Adv. Proc. No. _____

Plaintiff Bruce Kreofsky and Sons, Inc., a Minnesota Corporation d/b/a Kreofsky Building Supplies, for its Complaint against Britt Bjugan, the above-named Debtor-Defendant ("Debtor"), pursuant to 11 U.S.C. §727 and 11 U.S.C. §523, hereby states and alleges that Debtor is not entitled to a Chapter 7 discharge and that Debtor's debt owed to Plaintiff is nondischargeable debt, according to the following:

Jurisdiction and Procedural History.

1. This adversary proceeding is brought under Bankruptcy Rules 4004, 4007 and 7001 et seq., and arises in connection with or is related to a proceeding under Chapter 7 of the Bankruptcy Code styled, In re Bjugan, Britt L., Bankruptcy Case No. 03-37358, pending in the

United States Bankruptcy Court for the District of Minnesota.

2. The Court has jurisdiction over this matter under 28 U.S.C. §1334. This is a core proceeding within the meaning of 28 U.S.C. §157(b)(2)(I), (J). Venue of this Chapter 7 case in this district is proper under 28 U.S.C. §§1408, 1409.

3. Plaintiff is a Minnesota corporation with its principle place of business at 865 Enterprise Drive SW, Plainview, Wabasha County, Minnesota.

4. Debtor, on information and belief, resides at 301 5th Street SW, Pine Island, Goodhue County, Minnesota.

Background.

5. Debtor filed this Chapter 7 case on October 29, 2003, and has scheduled Plaintiff as a creditor and its claim for \$95,000.00 as an unsecured nonpriority claim on Schedule F.

6. Plaintiff commenced a state court proceeding, prior to the filing of this Chapter 7 case, against Debtor and filed the action in the District Court for Goodhue County on July 18, 2002, titled Bruce Kreofsky and Sons, Inc. v. Susan Bjungan and Britt Bjungan, Court File No. C8-02-1170 (hereinafter, "State Court Proceeding"), alleging that Defendant committed conversion and conspiracy to commit fraud and that Defendant was unjustly enriched.

7. Pursuant to 11 U.S.C. §362, the State Court Proceeding against Debtor was stayed upon the Debtor filing his Chapter 7 petition on October 29, 2003. Plaintiff proceeded against defendant Susan Bjungan in the State Court Proceeding. Ms. Bjungan did not contest the entry of a Judgment and Plaintiff received an order granting Summary Judgment in Plaintiff's favor and against Susan Bjungan only.

COUNT I.
**Objection to Debtor's Discharge For Knowingly Transferring, Removing, Destroying,
Mutilating or Concealing Property of Plaintiff.**

8. Plaintiff incorporates Paragraphs 1 through 7 inclusive as if fully set forth at length.

9. Under 11 U.S.C. §727(a)(2)(A), a debtor shall not be granted a discharge if "the debtor, with the intent to hinder, delay, or defraud a creditor . . . has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed . . . property of the debtor, within one year before the date of filing the petition."

10. Pursuant to the Minnesota Rules of Civil Procedure, extensive discovery was undertaken during the pendency of the State Court Proceeding, in which the following were discovered:

- a. Susan Bjugan was employed as a Bookkeeper for Plaintiff on December 4, 2000 through April of 2002.
- b. Debtor was married to Susan Bjugan at all relevant times during Susan Bjugan's employment with Plaintiff, and held jointly with her checking and savings accounts at the Bank of Zumbrota.
- c. From December 2001 through April 2002, Susan Bjugan embezzled over \$95,000.00 from Plaintiff.
- d. On November 30, 2001, Susan Bjugan was sentenced in Goodhue County, Case No. K5-01-1097 for embezzling from a prior employer, Pine Haven Nursing Home. In its Amended Order, dated March 22, 2002, the Court

ordered Ms. Bjugan to pay restitution to Pine Haven Nursing Home in the total amount of \$45,000.00, with a lump sum payment of \$30,000.00 due on April 2, 2002 and the remaining sum to be paid in \$250.00 monthly installments.¹

- e. In November of 2001, Debtor knew that Susan Bjugan stole \$30,000.00 from Pine Haven Nursing Home and that she was ordered to pay that amount in restitution. See Dep. of Britt Bjugan Part I at 101, included herewith as Ex. A.
- f. Debtor knew that Susan Bjugan paid the Pine Haven restitution with money from their joint bank accounts.
- g. After Debtor learns that Susan Bjugan embezzled from Pine Haven, Debtor continued to spend, transfer or conceal Plaintiff's property from December 1, 2001 through May 11, 2002 by writing checks in excess of \$20,000.00.
- h. In June of 2002, Debtor and Susan Bjugan sign a Marital Termination Agreement ("June MTA") as they prepare to divorce, awarding the parties homestead, all personal property in Debtor's possession, one-half the value of the joint bank accounts and several vehicles to Debtor.
- i. Within one year of filing Debtor's bankruptcy Petition, Debtor and Susan

¹Ms. Bjugan initially paid the sum of \$29,551.00 as part restitution and the Court ordered that Ms. Bjugan pay as additional restitution the sum of \$59,227.35 as out of pocket expenses incurred by Pine Haven Nursing Home in prosecuting the theft.

Bjugan void the June MTA and execute a new Marital Termination Agreement in December of 2002, which reserves the issue of property and debt division until after the litigation in the State Court Proceeding.

j. Neither Debtor nor Susan Bjugan has ever returned the Plaintiff's property and Debtor continues to conceal Plaintiff's property from it.

11. Debtor is not entitled to a Discharge because Debtor, with the intent to hinder, delay or defraud Plaintiff transferred, removed, destroyed, mutilated, or concealed, or permitted to be transferred, removed, destroyed, mutilated, or concealed property of the debtor, within one year before the date of filing the petition.

COUNT II.

Objection to Discharge for Knowingly Making a False Oath or Account.

12. Plaintiff incorporates Paragraphs 1 through 11 inclusive as if fully set forth at length.

13. Under 11 U.S.C. §727(a)(2)(A), a debtor shall not be granted a discharge if "the debtor knowingly and fraudulently, in or in connection with the case . . . made a false oath or account."

14. On Schedule I of Debtor's Chapter 7 Petition for bankruptcy, Debtor misrepresents Endres Processing, LLC as his only employer from which Debtor misrepresents gross monthly income of \$3,386.00.

15. During the State Court Proceeding, Debtor, under oath, claims that he works for Endres Processing, LLC for an annual gross income of \$44,000.00 or \$3,666.00 per month, which equals \$280.00 per month as additional income not listed on Schedule I.

16. Moreover, during the State Court Proceeding, Debtor, at his deposition under oath, claimed the following additional sources of income not included on Schedule I:

- a. Officer's Income as a Fireman, for which Debtor was paid approximately \$2,000.00 in 2002.
- b. Cash jobs as an electrician for which Debtor was paid approximately \$600.00 in 2002.

17. Plaintiff relied on Debtor's misrepresentations described herein and Plaintiff suffered loss due to its reliance on Debtor's misrepresentations.

18. Debtor is not entitled to a Discharge because Debtor knowingly and fraudulently in or in connection with the case, made a false oath or account.

COUNT III.

Debtor's Debt of \$95,000.00 owed to Plaintiff is Nondischargeable Debt Because Debtor Obtained the Property By False Pretenses, False Representations and/or Fraud.

19. Plaintiff incorporates Paragraphs 1 through 18 inclusive as if fully set forth at length.

20. Under 11 U.S.C. §523(a)(2)(A), (6), a debtor is not entitled to a discharge under Chapter 7 "from any debt . . . for money, property . . . to the extent obtained, by . . . false pretenses, a false representation, or fraud."

21. Susan Bjugan committed a fraud against Plaintiff, while employed by Plaintiff and married to Debtor, by doing the following:

- a. In November of 2001, Susan Bjugan failed to inform Plaintiff of her prior theft conviction involving Pine Haven Nursing Home, which was required under her sentencing order, and began writing checks to herself and her

creditors in excess of \$95,000.00 and falsifying Plaintiff's financial books.

- b. Susan Bjugan admitted during her deposition in the State Court Proceeding that she took the money from Plaintiff knowing that it did not belong to her.
- c. Susan Bjugan purposely did not notify Plaintiff of the Pine Haven theft and falsified Plaintiff's books so that Plaintiff would continue to employ her. Plaintiff did continue to employ Susan Bjugan.
- d. Plaintiff suffered damages in excess of \$95,000.00.

22. Debtor joined Susan Bjugan's fraud against Plaintiff and is therefore liable for the fraud upon admitting, under oath during his deposition in the State Court Proceeding, the following:

- a. Debtor knew of Susan Bjugan's theft from Pine Haven in November of 2001, about the same time Susan Bjugan began stealing from Plaintiff.
- b. In December of 2001, Debtor knew that Susan Bjugan used \$30,000.00 of Plaintiff's stolen money, which was placed in Debtor's and Susan Bjugan's joint accounts, to pay restitution to Pine Haven Nursing Home.

23. In addition to joining Susan Bjugan's fraud on Plaintiff, Debtor made the following false representations in an affidavit dated July 22, 2002:

- a. Debtor stated that he was unaware of Susan Bjugan's prior crime against Pine Haven Nursing Home and that he only recently learned of her theft against Plaintiff.
- b. Debtor stated that he had no idea where Plaintiff's \$95,000.00 stolen by

Susan Bjugan went and that he did not see or receive any of the money.

24. The monies obtained through Debtor's and Susan Bjugan's fraud and false representations were spent, not only on restitution to Pine Haven, but also for Debtor's and Susan Bjugan's household bills, home improvements, vacations and recreational vehicles.

25. Debtor's debt owed to Plaintiff is nondischargeable because the debt was obtained by false pretenses, false representation and/or fraud.

COUNT IV.

Debtor's Debt of \$95,000.00 owed to Plaintiff is Nondischargeable Debt Because Debtor Willfully and Maliciously Injured Plaintiff's Property.

26. Plaintiff incorporates Paragraphs 1 through 25 inclusive as if fully set forth at length.

27. Under 11 U.S.C. §523(a)(2)(A), (6), a debtor is not entitled to a discharge under Chapter 7 "for willful and malicious injury by the debtor to another entity or to the property of another."

28. In December of 2001, Debtor knew that Susan Bjugan was sentenced to pay restitution for the Pine Haven theft and that she paid the Pine Haven restitution with money she stole from Plaintiff.

29. Debtor knew or should have known that Susan Bjugan was embezzling Plaintiff's property and that she was depositing the stolen monies into the Debtor's joint checking and savings accounts.

30. Debtor, from December of 2001, willfully and maliciously spent and otherwise converted in excess of \$95,000.00 of Plaintiff's property.

31. Debtor's debt owed to Plaintiff is nondischargeable debt because Debtor willfully

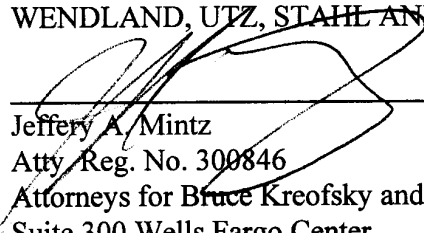
and maliciously injured Plaintiff's property.

WHEREFORE, Plaintiff prays for the following relief:

- A. Debtor's request for a discharge be denied;
- B. Debtor's debt of \$95,000.00 owed to Plaintiff shall be nondischargeable debt;
- C. Cost and disbursements in bringing this action; and
- D. For such other and further relief the Court deems just and proper.

Dated: January 29, 2004

WENDLAND, UTZ, STAHL AND MINTZ, LTD.



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EXHIBIT A

1 A. That she had taken 30,000 from Pine Haven.

2 Q. And she was ordered to repay that?

3 A. Yes.

4 Q. Okay. As you sit here today, do you remember
5 when you learned that fact?

6 A. No.

7 Q. Could that have been in November of '01?

8 A. It would have been somewhere around her
9 conviction date.

10 Q. Okay. When she told you that she was convicted?

11 A. I don't believe it was that day. But at some
12 point in that time frame, yes.

13 Q. November or December '01 you learned that she was
14 ordered to repay \$30,000?

15 A. Yes.

16 Q. Did she tell you she had done that at any point?

17 A. Done embezzlement prior to that?

18 Q. No. Did she ever tell you that she had repaid
19 the restitution award?

20 A. She told me at a later date, yes.

21 Q. When did she tell you she repaid that?

22 A. I don't know a specific time.

23 Q. Approximately.

24 A. Right around that same time.

25 Q. Right around December of '01?